IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

O.S.A. No. 3 of 1999
AND
O.S.A. No. 19 of 1999

Judgement reserved on: 6.3.2006

Date of decision : 9-3-2006

(For title, see over-leaf)

Coram

The Hon'ble Mr. Justice : V.K. Jhanji, Judge
The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting? Yes

For the appellants :
(See over-leaf).

For the respondents:

Surjit Singh, Judge

These two appeals are directed against the same judgment and decree, i.e. judgment and decree dated 3.8.1998, of learned Single Judge of this Court, whereby suit for recovery of money filed by the H.P. State Forest Corporation and another, appellants in OSA No. 19 of 1999, hereinafter called plaintiffs, and counter-claim filed by Gurcharan Dass Sekhri, appellant in OSA No. 3 of 1999, hereinafter called defendant, have both been dismissed.

Whether reporters of Local Papers may be allowed to see the Judgment?

2. Plaintiffs filed a suit for recovery of a sum of Rs.9,08,971/- against the defendant, pleading the following cause of action. There had been an agreement between the plaintiff and the defendant that the latter would extract 785.056 quintals of resin from the trees standing in sixteen Government forests and supply the same to the plaintiffs at the rate of Rs.329/- per quintal. The agreement was executed on 30.3.1991 and was to remain in force upto 30.11.1991. The plaintiff was to supply through its servants setting up of the crop material upto 15th April 1991 and thereafter scraping was to be carried out and resin was to be tapped / collected upto 30.1.1991. The number of blazes, which were allotted for the purpose, was 24533. The defendant was supplied the requisite material for setting up of the crop on 3rd and 23rd April, 1991. He was supplied tins and acid paste etc. on 15.5.1991. He completed the crop setting process in respect of 15232 trees, by 29.5.1991. He did not employ the requisite number of labourers, with the result that he could not extract the stipulated quantity of resin. The quantity which he extracted and supplied to the plaintiffs, was only 262.4 quintals. There was a clause in the agreement that in case of deficiency in the extraction and supply of resin, the defendant would pay an amount equivalent to the market value of the deficient quantity. Market rate of resin, at the relevant time was Rs.1515/- per quintal. The plaintiffs, therefore, made a claim for 522.656 quintals of resin, i.e. the quantity by which the resin extracted and supplied by the defendant was short, at the rate of Rs.1515/- per quintal and also claimed interest at the rate of 18% per annum from 1.12.1991 to the date of filing of the suit, i.e. 30.11.1992.

3. Defendant contested the plaintiffs' claim and also filed a counter-claim. It was not denied that there had been an agreement between the parties, as alleged by the plaintiffs. However, it was denied

that the material for crop setting was supplied in April 1991. It was specifically pleaded that the material for crop setting, though agreed to be supplied by 15.4.1991, was in fact supplied in piece meal and the last consignment was delivered in July 1991. It was also alleged that 4221 trees in twelve forests were incapable of yielding any resin as no space was left on those trees for making blazes because their trunks, upto the height of eight feet, had already been blazed all around, for extraction of resin in the past and this fact had been brought to the notice of the plaintiffs, but no action was taken or at-least conveyed to the defendant for deletion of those trees from the number of trees / blazes mentioned in the annexures to the agreement nor had the quantity of resin, agreed to be supplied, been reduced proportionately. Further it was alleged that 4779 trees, in the remaining four forests, were impossible to tap for resin, because of inaccessibility and this fact had also been brought to the notice of the plaintiffs, but no action was taken. Six hundred more trees were stated to have got burnt and hence those were also required to be excluded from the number of blazes, mentioned in the annexures to the agreement, but that too was not done by the plaintiffs. It was also alleged that the material for collection of resin had also not been supplied in time and the result was that labour, engaged by the defendant, deserted him abandoning the work.

4. Counter-claim of Rs.1,74,426/- was also filed by the defendant alleging that he had supplied resin weighing 267.54 quintals, valuing Rs.88,020.66 and besides that he had deposited security of Rs.20,000/-, but neither the money on account of supply of resin had been paid nor had the security been refunded. It was also alleged that a sum of Rs.40,000/- had been paid as advances to the labourers, engaged by the defendant, and that because of the plaintiffs' failure to supply the material on time,

those labourers remained idle for some-time and ultimately ran away abandoning the work and so the plaintiff was liable to compensate the defendant in respect of the amount paid by him as advances to the labourers.

5. Learned Single Judge framed the following issues:-

> "1. Whether the loss incurred by the plaintiff accrued due to the negligence and laxity of the defendant? OPP
> 2. Whether the defendant is competent to file the counter-claim? OPD
> 3. Whether the defendant failed to comply with his part of the agreement? OPP
> 4. Whether the suit has been filed by the competent person? OPP
> 5. Whether the defendant was class 'C' registered contractor? If so, its effect? OPD
> 6. Whether the agreement between the plaintiff and defendant is void as alleged in paras 4 and 5 in the written statement? OPD
> 7. Whether the plaintiffs failed to perform their part of contract as alleged in para 6 of the written statement? If so, its effect? OPD
> 8. Whether about 9600 trees were liable to be deleted from the contract as alleged in para 6 of the written statement? If so, its effect? OPD
> 9. Whether the defendant is entitled to recover Rs.1,74,426.86, as alleged in para 14 of the written statement? OPD
> 10. To what amount is the plaintiff entitled to recover from the defendant? OPP
> 11. Relief."

6. At the end of the trial, the learned Single Judge held that 4221 blazes could not be worked because of over-extraction having already taken place, 4779 blazes were in accessible and hence those were not possible to

tap and that the plaintiffs also did not supply the crop setting up material and other material, required by the defendant for extraction of resin, as per agreed schedule and delayed the supply of such material, due to which the defendant could not extract the agreed quantity of resin within the stipulated period. Consequently the suit has been dismissed.

7. As regards the counter-claim, the learned Single Judge held that the necessary particulars, as per provisions of Order 7 Rule 1 of the Code of Civil Procedure had not been pleaded. Further it was held that the amount of counter-claim fell below the lower limit of the pecuniary jurisdiction of this Court on original side and hence this Court did not have the jurisdiction to adjudicate upon the same.

8. Both the plaintiffs and the defendant are aggrieved by the findings, the final verdict and the decree of the learned Single Judge. So they have preferred these appeals. We have heard the learned counsel for the parties and also perused the record.

9. It may be stated at the very outset that the finding of the learned Single Judge that 4779 trees were inaccessible and that the plaintiffs had been duly informed about the same by the defendant but the former took no action on such information, is not supported by credible evidence. It is only the defendant, who has made such a claim in the written statement as also in his testimony as DW-1. The learned Single Judge has observed that PW-2 Udham Singh, Assistant Manager, in his testimony has admitted that he had submitted a report about 4779 trees, which were reported to him to be inaccessible orally by the defendant and this fact proves the plea of the defendant. As a matter of fact, what PW-2 Udham Singh, Assistant Manager of the plaintiff – Corporation, has admitted in his cross-examination is that he was orally informed that tapping

of 4779 trees was impossible. He stated that he did not remember if any of those trees were impossible to tap. The defendant placed on record one document Ext. DW-1/A, which is regarding those 4779 trees. This is in the form of a letter, addressed to PW-2 in his capacity as Assistant Manager of the plaintiff – Corporation. This letter was shown to PW-2, during the course of cross-examination. He denied having received such a letter. This letter purports to be dated 11.6.1991. The defendant, while in the witness box, stated that he wrote this letter to PW-2. This letter had apparently not been got receipted from PW-2 or any official, working in his office, nor did the defendant say, while in the witness box as DW-1, by what mode this letter was sent to PW-2. As a matter of fact, this letter appears to have been fabricated. There is another letter dated 28.7.1991, Ext. DW-1/B-7, placed on record by the defendant himself. In this letter there is a reference to three letters dated 17.5.1991, 11.6.1991 and 3.7.1991, but a reading of this letter shows that the defendant claimed the exclusion of only 4221 trees (out of the total number of 24533 trees / blazes) allotted to him, on account of those trees having already been over-exploited. There is not even a whisper of 4779 trees, which are claimed to be inaccessible, in spite of the fact that this letter bears references to three letters, including a letter dated 11.6.1991. Not only this, there is yet another letter dated 16.9.1991. In this letter also, reference is made to several letters, including one dated 11.6.1991, but the contents of the letter speak of only 4221 trees, which were not supposed to yield any produce, because of over-tapping in the past. In this letter also there is no mention of 4779 trees allegedly inaccessible.

10. Defendant tried to prove the plea of inaccessibility of 4779 trees by examining one Om Singh (DW-2), to whom thirty thousand blazes

in nineteen forests, including sixteen forests with respect to which there was agreement between the plaintiffs and the defendant, had been allotted during the next year, i.e. 1992. The witness testified that out of thirty thousand blazes, awarded to him, 8500 were located at places where extraction was not possible and that out of those 8500 trees, 8000 were in those sixteen forests in which the work had earlier been awarded to the defendant. In the cross-examination, the witness has admitted that there was a shortfall of 16 to 17 per cent in the extraction of agreed quantity of resin. Now, if out of 30,000 blazes 8500 were impossible to tap, the shortfall was supposed to be around 33 to 34 per cent, but the witness says that it was only 16 to 17 per cent, meaning thereby that his testimony that 8500 blazes were impossible to tap, is incorrect. As a matter of fact, the percentage in shortfall of extracted quantity of resin shows that around 4000 blazes were difficult or impossible to tap. The figure is almost equivalent to 4221 blazes, which PW-1 R.L. Gupta, Divisional Manager of the plaintiff – Corporation, admits in his cross-examination, were not supposed to yield any resin, because of over-taping in the past and which he had directed to be excluded from the number of blazes, allotted to the defendant.

11. Admittedly, the defendant had been awarded 24533 blazes. His contention is that 4221 blazes had already been over-exploited and so they were not supposed to yield any resin and 4779 blazes were inaccessible and hence it was not possible to extract any resin therefrom and other 600 trees had been destroyed in a fire. Admitted case of the parties is that the defendant extracted resin only from 9360 blazes. The defendant has not come-forward with any explanation, except that he was not supplied the equipment and the material for extraction on time, with respect to remaining 5573 blazes.

12. Defendant's plea that he could not extract resin from all the blazes within the stipulated period, because of the delay on the part of the plaintiffs in supplying the equipment and material, required for extraction of resin, is full of contradictions. While, according to the documents, which are in the form of some letters, allegedly written by him to the plaintiffs and which the plaintiffs deny to have received, it is mentioned that the material had not been supplied in full, even at the time of writing of the last letter, which is dated 22.9.1991 and in his testimony as DW-1 also he has stated so, but a suggestion put to R.L. Gupta (PW-1), Divisional Manager of the plaintiff – Corporation, in the cross-examination, indicates that the last letter, addressed by the defendant, complaining of non-supply of the full quantity of material, was dated 3.7.1991. This belies the defendant's plea that he could not complete the work awarded to him within the stipulated period, because of the plaintiff's alleged default in supply of the equipment and material on time.

13. In view of the above discussed evidence, we are of the view that out of 24533 blazes, from which resin was agreed to be extracted by the defendant, only 4221 blazes were incapable of yielding any resin because of the over-taping of such trees in the past and that from remaining 20312 blazes resin could have been extracted. If the quantity of resin, which was agreed to be supplied by the defendant, is reduced proportionately to the number of blazes from which resin could not have been extracted, i.e. 4221, it comes down to 650 quintals. The agreement provided that there could be shortfall of ten per cent in the extraction of the resin. Therefore, if the aforesaid quantity of 650 quintals is further reduced by 10%, the expected quantity of resin comes down to 585 quintals. The defendant supplied 267.54 quintals of resin. Thus, the shortfall is to the

tune of 317 quintals. The plaintiffs have claimed compensation at the rate of Rs.1515/- per quintal, which is alleged to be the prevailing rate at the relevant time. In our considered view, the plaintiffs are not entitled to damages at the aforesaid rate. The plaintiff - Corporation had offered to the defendant its own resources in the form of blazes for extraction of resin. These resources remained untapped to the extent of the shortfall in the quantity of resin supplied and in fact the left out blazes were allotted for tapping to another contractor, during the next following year. Therefore, we feel that the amount of money, which the plaintiffs were supposed to have paid to the defendant had he supplied the short quantity of resin, needs to be subtracted from the amount of compensation, which is claimed at the market rate of Rs.1515/- per quintal. It is the plaintiffs' own case that they were to have paid to the defendant at the rate of Rs.329/- per quintal. Therefore, the loss suffered by the plaintiffs on account of shortfall in the extraction of resin is to be worked out by reducing the amount of prevailing market rate by an amount of Rs.329/- per quintal. This way, the loss suffered by the plaintiffs in terms of money comes to 317 quintals (short quantity of resin) X Rs.1286 (prevailing market value – the amount which the plaintiff was supposed to have paid to the defendant) = Rs.4,07,662/-.

14. Reasons recorded by the learned Single Judge for rejecting the counter-claim are not legally sustainable. The first reason is that particulars of the counter-claim, as per requirement of rules of pleadings, are not there. We do not find any substance in it. A combined reading of the paragraphs pertaining to the reply to the plaint and the paras pertaining to the counter-claim, clearly spell out all the necessary particulars for the counter-claim. The second reason is contrary, even to the bare statutory provision contained in the proviso to sub-rule (1) of Rule 6-A of Order 8 of

the Code of Civil Procedure. The learned Single Judge has observed that the amount of the counter-claim, being less than rupees two lacs and the lower limit of pecuniary jurisdiction of this Court being rupees two lacs, counter-claim cannot be entertained by this Court for want of jurisdiction. A bare reading of the aforesaid provision of law shows that for exclusion of the jurisdiction of the Court, in respect of counter-claim, the value of the claim should not exceed the pecuniary limits of jurisdiction of the Court, meaning thereby the value of the counter-claim should not be more than the upper limit of the pecuniary jurisdiction of the Court concerned. There is no upper limit of pecuniary jurisdiction of this Court. So we disagree with the findings of the learned Single Judge qua counter-claim.

15. Admittedly, the defendant extracted and supplied 267.54 quintals of resin to the plaintiff. He has not been paid anything on account of this supply, though as per agreement, he was to be paid at the rate of Rs.329/- per quintal. The amount comes to Rs.88,020/-. The defendant also deposited Rs.20,000/- as security with the plaintiffs. This was refundable security. It has also not been refunded by the plaintiffs. Therefore, out of the aforesaid amount of Rs.4,07,662/-, held due to the plaintiffs, a sum of Rs.1,08,020/- due to the defendant, is required to be subtracted. The actual amount thus due to the plaintiff from the defendant gets reduced to Rs.2,99,642/-.

16. The plaintiffs have claimed interest at the rate of 18% per annum on the amount due to them. The rate at which the interest has been claimed, in our considered view, is accordingly on the higher side. We feel that it would be in the interest of justice if interest is awarded at the rate of 10% per annum upto the date of the institution of the suit. The suit was filed, about a year after the last date by which the defendant was supposed

to have supplied the extracted resin. Thus, the amount awardable to the plaintiffs on account of interest at the rate of 10% upto the date of the institution of the suit, comes to Rs.29,964. The total amount due to the plaintiffs on the date of institution of the suit works out at Rs.3,29,606/-.

17. As a sequal to the above discussion and findings, we accept both the appeals, set aside the decree of the learned Single Judge dismissing the suit as also the counter-claim, and pass a decree for a sum of Rs.3,29,606/- in favour of the plaintiffs and against the defendant, with proportionate costs and future interest at the rate of 6% per annum, from the date of institution of the suit to the date of payment of the aforesaid amount of money. The counter-claim of the defendant has been partly allowed to the extent of Rs.1,08,020/- by way of set off and the decree for the aforesaid amount of Rs.3,29,606/- has been passed after adjusting the aforesaid amount of Rs.1,08,020/-. Decree sheet be drawn accordingly.

(Surjit Singh)
Judge

(V.K. Jhanji)
Judge

March 9, 2006 (BC)

OSA No. 3 of 1999

Gurcharan Dass Sekhri …….. Appellant

Versus

H.P. State Forest Corpn. Ltd. & anr. ….Respondents

For the appellant : Mr. Kuldip Singh, Sr. Advocate, with M/S Harinder Singh and Karan Singh, Advocates.

For the respondents : Mr. Neel Kamal Sood, Advocate.

OSA No. 19 of 1999

The H.P. State Forest Corpn. Ltd. & another …..Appellants.

Versus

Gurcharan Dass Sekhri …… Respondent.

For the appellants : Mr. Neel Kamal Sood, Advocate.

For the respondent : Mr. Kuldip Singh, Sr. Advocate, with M/S Harinder Singh and Karan Singh, Advocates.